IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.01.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.44367 of 2006
and
M.P.No.1 of 2006

Titan Employees Welfare Union,
Rep.by its General Secretary,
1-A, 6th cross street,
Krishna Nagar,
Hosur, Krishnagiri District.

... Petitioner

Vs.

1. Government of Tamil Nadu,
   Rep.by its Secretary,
   Labour and Employment Department,
   Fort St.George,
   Chennai-9.

2. The Deputy Commissioner of Labour,
   Shankar Nagar, Salem-7.

3. The Management of Titan Industries Ltd.,
   Hosur, Krishnagiri District.

4. Titan Employees Union,
   Rep.by its General Secretary,
   3, SIPCOT Industrial Estate,
   House-635 126.

... Respondents

PRAYER: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus direct the 2nd respondent to initiate conciliation proceeding regarding the question whether the 3rd respondent management under clause 8 of the settlement dated 21.09.2006 entered u/s 18(1) of I.D.Act with the 4th respondent union insists on deducting Rs.2,000/- from the members of petitioner union to pass on to the 4th respondent union and whether it would not amount to unfair labour practice in terms of clause 2 of the Fifth Schedule of I.D. Act and to direct the first respondent to refer the aforesaid dispute for adjudication in case conciliation fails.

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For Petitioner : Mr.N.G.R.prasad for
Mr.D.Hariparanthaman
For Respondents : Mr.V.Prakash, S.C.
for R4
Mr.S.Ramasubramanian Associates
for R3
Mr.D. Srinivasan, G.A. R1 & R2

O R D E R

The writ petition is filed for a direction against the second respondent to initiate conciliation proceedings to decide the question as to whether clause 8 of the Settlement Deed entered under Section 18 (Industrial Disputes Act) dated 21.09.2006 by the third respondent management with the 4th respondent union insisting deduction of Rs.2,000/- from the members of the petitioner union to pass on to the 4th respondent union amounts to unfair labour practice in terms of clause 2 of the V Schedule of the Industrial Disputes Act.

2. The petitioner union is the trade union registered under the Trade Union Act, 1956. In respect of the Watch Division and Engineering Division of the third respondent industry in which there are 1309 confirmed workers they were governed by the settlement entered between the third and fourth respondents periodically under Section 12 of the Industrial Disputes Act. The last such settlement was dated 18.04.2003, which expired on 31.01.2006 according to the petitioner union. Since there was a difference of opinion among the members, 193 members of the fourth respondent union have resigned from March 2006 and in June 2006 the said workmen wrote to the third respondent requesting management not to deduct any money towards subscription to the 4th respondent union. Accordingly the third respondent has also stopped deducting subscription amount from the wages of 193 workers from June 2006 on wards.

3. As per byelaw of the 4th respondent union when the members fails to pay subscription for 3 months continuously, he seizes to be a member of the said union. Therefore, all the 193 workers including the petitioner, who is the Secretary of the petitioner union have ceased to be the members of the 4th respondent union from March 2006, when they have resigned and in any event their membership being cancelled from June 2006 , the management stopped deducting subscription from the wages. The petitioner union was formed on 02.04.2006 and certificate has been obtained under the Trade Unions Act, after the process of registration was over.

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4. The third and fourth respondents have entered a settlement under Section 18(1) of the Industrial Disputes Act on 29.09.2006 revising the wages and other benefits. According to the petitioner, the settlement provides for an increase of Rs.4,500/- per month from monthly wages. As per settlement it represented that the 4th respondent union represents all 1309 workmen including 193 workmen who are in the members of the petitioner union and who have resigned. The said settlement entered was for the period between 01.06.2006 to 31.05.2009.

5. According to the petitioner, Clause 8 of the settlement provides for a payment of lump sum payments of an amount of Rs.15,200/- to each workmen for the period from 01.02.2006 to 31.05.2006. As per Clause 8 of the settlement an amount of Rs.2,000/- is to be deducted from all 1309 workmen including the members of the petitioner union. According to the petitioner 18 (1) settlement binds only the parties to the settlement, since the same is not under Section 12(3) of the Industrial Disputes Act. Therefore, according to the petitioner in all fairness, the third respondent management is bound to extend the benefits of revision under Section 18(1) of the Industrial Disputes Act, even to the non members on basis of 'equal pay for equal work', but without providing compulsory deduction from the members.

6. However, according to the petitioner, when the other workers were given benefit of the settlement as per Clause 8 dated 21.09.2006 and bonus was paid on 11.10.2006 along with October 2006 salary, the members of the petitioner union were not given such benefits and the third respondent has insisted for signature in a printed format in the form of letter of consent for which the members of the petitioner have protested. The lump sum payment as well as bonus were not paid to the members of the petitioner union. It was only after getting the consent letter under protest, the benefits were given to about 160 members of petitioner union after deducting Rs.2,000/- mentioned in Clause 8 of the settlement. However, 26 members including the petitioner were not given the benefits as they have refused to give consent letters. However, the writ petitioners have stated in the affidavit that the said 26 members have also decided to receive the benefits under protest.

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7. According to the petitioner, the idea was that many of the members of the petitioner union shall go to the 4th respondent union. It is also the case of the petitioner that the third respondent has accepted not to send the money deducted from the salary of the members of the petitioner union to the 4th respondent and the petitioner learned that the 4th respondent is pressurising

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the third respondent to pass on the deducted amount. According to the petitioner, the second respondent has failed to interfere with the unfair labour practice committed by the third and fourth respondent. In these circumstances the present writ petition came to be filed.

8. I have heard Mr.N.G.R.Prasad for Mr.D.Hariparanthaman learned counsel appearing for the petitioner as also Mr.V.Prakash learned Senior Counsel appearing for the 4th respondent and S.Ramasubramaniam Associates appearing for the third respondent apart from Mr.G.Sreenivasan learned counsel appearing for the respondents 1 and 2.

9. Mr.N.G.R.Prasad learned counsel appearing for the petitioner would vehemently submit that while admitting that such letters were given by the members of the petitioner union under protest, it does not mean that the third respondent can deduct the amount from the salary of the members of the petitioner union and send it to the fourth respondent union which is unjust and unfair. On the other hand he would also submit that in equity and on the principles for 'equal pay for equal work' the members of the petitioner union are entitled for the benefits, which are entered under Section 18(1) of the Industrial Disputes Act, between the third and fourth respondents.

10. On the other hand Mr.V.Prakash learned Senior counsel appearing for the 4th respondent would submit that when once the petitioner themselves have taken the stand that they are entitled for the benefits of 18(1) settlement entered between third and fourth respondents union, it is only consequential that any other obligations under the said settlement has also to go along with the same and the members of the petitioner union cannot say that they will be entitled only for the benefits and not for the obligations. He would also rely upon the judgement of the Hon'ble Supreme Court in 1985(1) LLJ 314 (SC) to substantiate his contention. Now it is seen that while filing the writ petition out of the total number of petitioner union, 160 members have already received the benefits and they have also given a consent letter, however, with protest and the remaining members are also taken a decision to give such consent letter under protest.

11. I am of the considered view that in such circumstances, the second respondent to whom an objection has been raised by the members of the petitioner union seeking for intervention, since according to the petitioner union it amounts to unfair labour practice, should be directed to initiate conciliation proceedings and pass appropriate orders. Inasmuch as the members of the petitioner union, who had given a consent letter under protest, in

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fairness the entire dispute can be resolved after the conciliation proceedings are over and if not by reference to the competent court as per the Industrial Disputes Act, and no prejudice is going to be caused to the members of the petitioner union.

12. In view of the same and after hearing the learned counsel for the petitioner as also the learned counsel appearing for the respondents, the second respondent is directed to initiate conciliation proceedings as per the complaint of the petitioner union dated 31.10.2006 and take appropriate decision after giving opportunity to the petitioner union as well as the respondents 3 and 4 and such order shall be passed within a period of 8 weeks from the date of receipt of the copy of this order. No Costs. Consequently, the connected W.P.M.P.is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nbj

To

1. The Secretary,
   Government of Tamil Nadu,
   Labour and Employment Department,
   Fort St.George,
   Chennai-9.

2. The Deputy Commissioner of Labour,
   Shankar Nagar, Salem-7.

3. The General Secretary,
   Titan Employees Union,
   3, SIPCOT Industrial Estate,
   House-635 126.

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4. The Management of Titan Industries Ltd.,
Hosur, Krishnagiri District.

1 cc to Mr.D. Hari Paranthaman,, Advocate, sr. 3547

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